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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,738	02/04/2002	Ramesh Keshavaraj	2102REI	4100

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EXAMINER
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SINGH, ARTI R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/066,738	<b>Applicant(s)</b> KESHAVARAJ, RAMESH	
	<b>Examiner</b> Ms. Arti Singh	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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#### **DETAILED ACTION**

##### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/28/2003 has been entered.

##### **Response to Amendment**

2. The Examiner has carefully considered Applicant's declaration and accompanying remarks filed on 10/28/2003. Despite these advances, Applicant's amendments/arguments are not found to be persuasive in terms to patentably distinguish the claims over the prior art and do not overcome the rejection made under 35 U.S.C. § 102 (e)/103 (a), in paragraph 8 of the previous office action, and are thus maintained and made final.

##### ***Response to Arguments***

3. Applicant's arguments dated 10/28/2003 have been fully considered but are not persuasive. Applicant's traverses the rejection made under 35 USC 102 (e)/103 (a), in paragraph 8 of the previous office action issued to Moriwaki et al. (5,989,660). Applicant's first traversal asserts that the teachings of Moriwaki et al. do not disclose nor fairly suggest an airbag fabric of the same low permeability as now claimed; and that Moriwaki et al. are concerned with providing a lower construction, and thus less expensive, fabric ultimately for airbag utilization that exhibits similar properties to woven fabrics of higher construction (e.g., higher cover factor); and that Moriwaki et al. accomplish this through the application of their extremely low levels of coating; and that such a coating does not provide low air permeability, at least to the degree now claimed by Applicant; and that the Examples of

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Moriwaki et al. do not disclose a fabric having a cover factor below a 2100 threshold level. In response to this the Examiner contends that, Moriwaki et al. in column 3, line 10, teach that the cover factor of the woven fabric to be 1700 to 2500, and that the coating level is 10 $\mu$  or less, both of which meet Applicant's claimed ranges, thereby meeting two of the structural configurations required by Applicant. It should be noted that when air permeability of an airbag is determined, the composite as a whole, that is, coating plus cover factor, must be taken into account. If the weave density is a tightly woven one, then less coating is applied to fill the interstices of the fabric, and if a looser weave is used more coating is applied to achieve the same air permeability of rather impermeability of the composite airbag fabric, and thus Moriwaki et al. do teach the low permeability that Applicant too desires. Further, with regard to the argument that the Examples do not teach a cover factor below a 2100 threshold, the Examiner takes the stance that, Applicant is correct in their deduction that most of the Examples and Tables shown in columns 10 and 11 do not show a cover factor having a threshold of 2100, however the Examiner must look at the reference as a "whole", and rely on the specification for the teachings, and not specifically to the Examples and Tables when making the rejections. The working Examples alone do not define the invention, and if this were the case, then is Applicant instructing the Examiner to rely on their Examples alone, and not the specification/claims when assessing their invention?

Applicant's next traversal is that Moriwaki et al. utilize cc/cm<sup>2</sup>/sec for their air permeability measurements, and that Applicant uses cfm; and that the conversion requires a multiplication factor -1.96, which throws Moriwaki et al's measurements well over that of Applicant. The Examiner takes the position that Applicant is not comparing apples to apples. Applicant is not using the same test methods to arrive at their deductions, and thus has not

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established an equal comparison. Furthermore, Applicant has not accounted for pressure and temperature that would be required variables when arriving at their conclusion.

With regard to the Declaration specifically to paragraph 5, it should be noted that while the Declaration shows that the specific embodiment does not have the claimed air permeability Applicant must show that the entire scope taught by the prior art would not have the claimed permeability that Applicant describes. Further, Applicant is not claiming the specific deniers; with the specific coating amounts and the specific cover factors etc. Applicant is claiming a broader range and thus Applicant must show that the prior art does not have the claimed permeability for the entire range claimed. It is as if Applicant deems a single point on a graph to be the entire invention. Hence the Applicant arguments are not commensurate in scope with what is claimed. Therefore, in lieu of the Examiner's rebuttal Applicant's arguments are found to be unconvincing and the rejection is maintained.

***Claim Rejections - 35 USC § 102/103 (restated for Applicant's convenience)***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -  
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

(e) the invention was described in-  
(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-43 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,989,660 to Moriwaki et al.

Moriwaki et al. discloses a fabric for use in an airbag comprising a fibrous substrate having adhered to it a covering layer made of a thermoplastic synthetic resin (abstract). The fibrous substrate or fabric used by patentee can be a woven, knitted or nonwoven fabric formed from polyamide fibers (column 2, lines 33-36). The fibers that make up the fabric have a denier of 200-500 (column 3, lines 8-10) and a cover factor of 1700 to 2500 denier (column 2, line 10). The synthetic thermoplastic resin that forms said covering layer is found to be equivalent to Applicant's film layer, and may be polyurethane, polyester, polyamide, acrylic polymer, polyethylene or polypropylene, of which polyurethane and polyester are the most preferred (column 3, lines 20-25). The average thickness of the synthetic thermoplastic film formed on the surface of the woven substrate is 10  $\mu$  or less, which when converted equals 0.393 mils, and thus meets the limitations which require the film thickness to be from 0.1 to about 3.5 mils thick.

With regards to the limitation of air permeability, patentee uses Japanese standards and states that the air permeability of the base fabric for air bags is preferably 20 cc/cm<sup>2</sup>/sec or less, more preferably 10cc/cm<sup>2</sup> /sec or less, being the air flow rate through the base fabric measured when air is fed at a pressure of 0.2 kg/cm<sup>2</sup>. The air bag produced

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using such a base fabric for air bags can be used as an air bag, for example, for a driver's seat, an air bag for a front passenger's seat, an air bag for a rear seat or an air bag for expansion from a position laterally of an occupant of a seat (column 4, lines 31-39), and thus it is not explicitly stated using Applicant's terminology. However, given that Moriwaki et al. meet each and every chemical and structural requirement set forth in the claims, then it must meet the property limitations of air permeability, being less than about 0.5 cfm under 124 Pa pressure at about 25 ° C, that depend from said requirements. In other words, it is reasonable to presume that the invention of Moriwaki et al. would inherently anticipate the physical properties of the present invention, since both inventions are comprised of an airbag fabric comprised of a woven polyamide substrate adhered or coated to a polyurethane film, wherein the film has a thickness of less than .4 mils; the fabrics are coated/adhered/laminated to the polyurethane layer by the same methods; both employ a woven polyamide fabric wherein the yarns have a linear density of 200 to 500 denier, and the fabric has a cover factor of 1700-2500.

Furthermore, as no other structural or chemical features are claimed which may distinguish the present invention from that of the Moriwaki et al. invention, the presently claimed physical properties of air permeability is deemed to be inherent to the invention of Moriwaki et al. The burden is upon Applicant to prove otherwise. Note *In re Fitzgerald* 205 USPQ 495. In addition, the presently claimed property of air permeability would obviously have been present once the Moriwaki et al. product was provided. Not *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977).

### ***Conclusion***

7. This is a RCE of applicant's earlier Application No. 10/006738. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on

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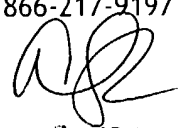
the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti Singh whose telephone number is 571-272-1483. The examiner can normally be reached on M-F 9-7pm.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Ms. Arti R. Singh**  
Primary Examiner  
Tech Center 1700

3/6/04